IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WA.No. 686 of 2007()

AGAINST THE JUDGEMENT IN WPC.7874/2007 Dated 08/03/2007

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APPELLANTS: PETITIONERS

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1. M.JAYASANKAR @ JAYAN,
   S/O. SANKARAMENON, TRIVENI, LAYAM ROAD,
   ERNAKULAM-682 011.

2. SMT. KUMARI MENON @ KUMARI,
   D/O. SANKARAMENON, C.C.40/232 B,
   J.K.TRIVENI, LAYAM ROAD, ERNAKULAM-682 011.

3. MRS. RADHA N. MENON,
   DOOR NO.C.C.40/232 A3, J.K.TRIVENI,
   LAYAM ROAD, ERNAKULAM-682 011.

4. P.SURESH MENON, S/O. NARAYANA MENON,
   RESIDING AT G.M.PALAYA, BANGALORE,
   REPRESENTED BY HIS POWER HOLDER,
   N.JAYAKRISHNAN.

5. MRS. KALYANI SREEKUMAR, W/O. SREEKUMAR,
   SANKARALAYAM, THOTTAKKATT ROAD,
   ERNAKULAM-682 011.

6. M/S. N.J.K.BUILDERS (P) LTD.,
   REPRESENTED BY IT'S DIRECTOR, SRI. N.JAYAKRISHNA,
   C.P.UMMER ROAD, ERNAKULAM-682 035.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS: RESPONDENTS

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1. STATE OF KERALA, REPRESENTED BY
   SECRETARY (TAXES), THIRUVANANTHAPURAM.

2. THE TAHSILDAR,
   KANAYANNUR TALUK, ERNAKULAM.

BY SPL. G.P. SRI V.V.ASHOKAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.Dattu, C.J. & K.T.Sankaran, J.

W.A.No.686 of 2007

Dated, this the 4th day of June, 2007

JUDGMENT

H.L.Dattu, C.J.

In this writ appeal the appellants are calling in question the orders passed by the learned Single Judge in W.P.(C) No.7874 of 2007 dt. 8.3.2007. By the impugned order the learned Single Judge has rejected the writ petition on the ground that the petitioners have an alternate remedy by way of appeal.

2. Before us, the learned counsel appearing for the appellants would contend that the 2nd respondent viz. Tahsildar, Kanayannur Taluk, had issued a notice proposing to bring to tax the apartments owned by the appellants and notice was issued proposing to levy building tax under the provisions of the Kerala building Tax Act, 1975.

3. It is the case of the appellants that they had filed detailed objections, inter alia, bringing to the notice of the 2nd respondent that they are in no way responsible for payment of the building tax under the Act. It is their further case before this Court that the Tahsildar without considering those objections has proceeded to pass the impugned order.

4. The purpose of issuing a notice and consideration of the objections filed to the said notice has been explained by various High Courts including the Apex Court. In the present case, a proposal is made by the Tahsildar to levy building tax under the Act. The said proposal is opposed by filing detailed objections. It was expected of the 2nd respondent to have considered those objections and to have passed an appropriate order. Without doing so, in the present case, he has proceeded to complete the assessment and also has issued a demand notice against the appellants. This action of the 2nd respondent, in our opinion, is in violation of the principles of natural justice.

5. Therefore, the impugned order passed by the 2nd respondent Tahsildar requires to be set aside and the matter requires to be remanded to the 2nd respondent for fresh disposal in accordance with law.

6. The learned Single Judge without noticing the aforesaid aspect of the matter has merely relegated the appellants to file appeal as provided under the Act. The findings and conclusions reached by the learned Single Judge, in our opinion, cannot be justified. Therefore, the order passed by the learned Single Judge also requires to be set aside by us.

In the result, the following:

Order

i) The writ appeal is allowed.

ii) The order passed by the learned Single Judge in W.P.(C) No.7874 of 2007 is set aside.

iii) The orders passed by the 2nd respondent Tahsildar is also set aside and the matter is remitted back to the 2nd respondent Tahsildar for fresh consideration and to pass appropriate orders in accordance with law and, if it is possible and permissible, after giving an opportunity of being heard to the assesees/appellants.

Ordered accordingly.

(**H.L.Dattu)**
Chief Justice

(K.T.Sankaran)
Judge

mt/-